

Mentor Law Group^{PLLC}

1100 Market Place Tower • 2025 First Avenue • Seattle, Washington 98121
TEL 206.493.2300 • FAX 206.493.2310

James A. Tupper, Jr.
direct 206.493.2317
tupper@mentorlaw.com

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VIA EMAIL

Bill Moore
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on Modification of the Industrial Stormwater General Permit

Dear Mr. Moore:

These comments on the proposed modification of the Industrial Stormwater General Permit are submitted on behalf of the Association of Washington Business. We appreciate the work that the Department of Ecology has done on this permit and the opportunity to comment on specific provisions within the proposed modifications. Our comments are limited to specific concerns in the draft modification. This should not over-shadow our appreciation for the overall balance exercised by the Department of Ecology in implementing past settlements, administrative rulings and legislation.

1. TMDL Effluent Limitations

We have a fundamental concern with the approach in the proposed permit modification for establishing numeric effluent limitations for some of the discharges to water bodies where there is an approved TMDL. Special Condition S3(E)(2) provides that such effluent limitations will be based on an applicable TMDL and incorporates the specific effluent limitations in Appendix 5.

It appears in Appendix 5 that default numeric effluent limitations have been developed for BOD, total suspended solids, turbidity, nitrogen and phosphorus without reference to site specific conditions or the specific terms of a

TMDL. We are, moreover, unaware of any TMDL that has a load allocation for industrial stormwater discharges.

The development of numeric limits based on waste load allocations is inconsistent with EPA guidance on TMDL based effluent limitations. EPA recommends that **"effluent limitations should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limitations."** EPA, "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs," at 4 (November 22, 2002)(citing *Interim Permitting Approach for Waster-Quality Based Effluent Limitations in Storm Water Permit*, 6 Fed. Reg. 43,761 (Aug. 26, 1996)). Consistent with EPA guidance, we recommend that Ecology change these proposed numeric limits to narrative limits for the purposes of this general permit.

It is not possible for the approximately 60 facilities that have been assigned numeric limits to understand or comment on the validity of the effluent limits proposed in the Appendix 5. At a minimum, the Department of Ecology should explain the process by which the numeric effluent limitations were derived by reference to the specific TMDL findings together with a description of the approach taken to calculate the numeric limits. It is also not clear how the permittee is to determine compliance with a numeric limit because a point of compliance is not stated in the permit. This information should have been provided in the Fact Sheet so that it could have been addressed during the public comment period.

Finally, we would appreciate your clarification that Appendix 5 represents all covered facilities that are subject to TMDL effluent limitations under Special Condition S3(E)(2). It is our understanding that a permittee will not have to independently determine if it is subject to this condition in the permit.

2. Action Levels for 303(d) Parameters

In Special Condition S4(C) there are no action levels for many of the parameters with benchmarks for discharges to impaired water bodies in Appendix 4 including mercury, arsenic and some pesticides. The final permit should include action levels for these parameters together with an explanation in an amended fact sheet or responsiveness summary as to how the action levels were derived. If this is not possible, then the final permit should clarify that only a Level One response is required when sampling shows amounts above the benchmark level for these parameters.

3. Monthly Monitoring

Special Condition S4(G) should replace the requirement for monthly monitoring with a requirement for quarterly monitoring of discharges to 303(d) waters. Monthly monitoring is inconsistent with other provisions of the permit

and will be very difficult for facilities to implement. Monthly monitoring will be unnecessarily burdensome given the difficulties experienced by many facilities in sampling under the current permit as well as the limited utility that would be obtained from monthly monitoring.

4. 303(d) Parameters

Special Condition S4(G) should clarify what parameters identified in Appendix 5 need to be monitored. We understand from the footnotes to Appendix 5 that only those parameters with a numeric value are subject to additional monitoring requirements under Special Condition S4(G).

5. Action Level One Response

The adaptive management requirements in Special Condition S4(C) create a potential for repetitive action where sampling results are consistently above benchmarks but below action levels. We understand that in this circumstance a facility may incorporate previous documentation, inspection results and remedial actions reports where inspection reveals no change in operation or appropriate additional response to monitoring results.

6. Public Access to SWPPPs

Public access to SWPPPs under Special Condition S5(F) should be clarified to allow for submission of a current SWPPP to the Department of Ecology in lieu of public access to a facility. As written, the condition creates permit liability for failing to respond to public requests for private records and potentially opens up a facility to inspection and access to members of the public. We are concerned about security issues and safety issues at plants and facilities that are not open to general public. We are also concerned about potential national security issues raised by the permit condition.

The best way to ensure that these concerns are addressed is by limiting access to requests to SWPPPs through the Department of Ecology. This will allow facility managers to protect secure information through the provisions of the Clean Water Act and the Public Disclosure Act. AWB recommends that this condition of the permit be replaced with the SWPPP access provisions in section 3.12 of EPA NPDES General Permit for Discharges from Large and Small Construction Activities. A copy of that section is attached to this comment letter.

The proposed condition is also vague as to what constitutes a SWPPP. In addition to the requirements of Special Condition S9, there are monitoring and documentation requirements that must be included within the SWPPP. We would appreciate clarification limiting access to SWPPPs to public records requests through the Department of Ecology as well as clarification as to the extent of SWPPP documents that must be produced under this condition of the permit modification.

7. **Monitoring Suspension**

The monitoring suspension provision for 303(d) monitoring set forth in Special Condition S4(g) should replace the words "effluent limitation" with "benchmark."

8. **Waiver Approval Timing**

The time frame for obtaining a waiver from stormwater treatment BMPs under Special Condition S4(C) is very short relative to the time frame within which stormwater treatment BMPs must be implemented. How will Ecology address the urgent need for a timely response to a waiver application?

9. **Waiver Application**

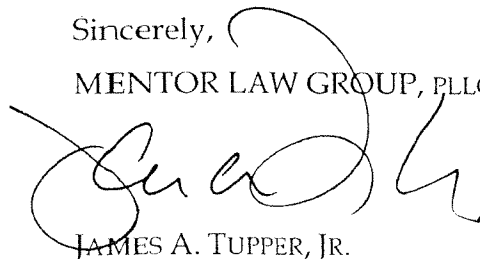
The action level requirements under Special Condition S4(C) proceed on a short time frame. Many permittees will want to evaluate early whether there is any likelihood that their discharges cause or contribute to a violation of water quality standards. The waiver option in Action Level Three Response should apply to any additional source control, operation control and stormwater treatment BMPs. We recommend that specific language be added to Action Levels One and Two to allow for a waiver application. The reference to a waiver in Action Level Three should also incorporate source control and operational control.

10. **Scope of Action of Level Responses**

The requirements for the three action levels are not specifically tied to an applicable stormwater manual. There is no way to be certain what the proposed permit will require in terms of an investigation to "identify source/operational control methods" or "investigate all available options of source control, operational control and stormwater treatment best management practices." We understand this to mean that the required investigation in each case is limited to the recommendations in an applicable stormwater manual. Otherwise there is no readily available means for a facility to determine whether it is ever in compliance with the adaptive management requirements.

We appreciate your consideration of these comments.

Sincerely,
MENTOR LAW GROUP, PLLC



JAMES A. TUPPER, JR.

seven (7) calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Subpart 3.6.B.

3.12 Signature, Plan Review and Making Plans Available

- A. A copy of the SWPPP (including a copy of the permit), NOI, and acknowledgement letter from EPA must be retained at the construction site (or other location easily accessible during normal business hours to EPA, a state, tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; the operator of a municipal separate storm sewer receiving discharges from the site; and representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service) from the date of commencement of construction activities to the date of final stabilization. If you have day-to-day operational control over SWPPP implementation, you must have a copy of the SWPPP available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.
- B. A sign or other notice must be posted conspicuously near the main entrance of the construction site. If displaying near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. The sign or other notice must contain the following information:
 - 1. A copy of the completed Notice of Intent as submitted to the EPA Storm Water Notice Processing Center; and
 - 2. If the location of the SWPPP or the name and telephone number of the contact person for scheduling SWPPP viewing times has changed (i.e., is different than that submitted to EPA in the NOI), the current location of the SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road).

- C. SWPPPs must be made available upon request by EPA; a state, tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; the operator of a municipal separate storm sewer receiving discharges from the site; and representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service to the requestor. The copy of the SWPPP that is required to be kept on-site or locally available must be made available, in its entirety, to the EPA staff for review and copying at the time of an on-site inspection.
- D. All SWPPPs must be signed and certified in accordance with Appendix G, Section 11.

3.13 Management Practices

- A. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the operator must replace or modify the control for site situations as soon as practicable.
- B. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.
- C. Litter, construction debris, and construction chemicals that could be exposed to storm water must be prevented from becoming a pollutant source in storm water discharges.
- D. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.
 - 1. Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.
 - 2. Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the site.